

CRIMINAL REVISION APPLICATION NO.27 OF 2002

S T A T E

through Police Inspector,
Sanguem Police Station,
Sanguem - Goa.

... Petitioner.

versus

1. Alex Fernandes,
s/o Anthony Fernandes,
Kitchen Helper,
c/o Maria Rosario,
Navelim, Salcete, Goa,
Native of Geetanjali
Bldg., 1st Floor,
Grant Road, Mumbai.
2. Bernard @ Bhendo Cardoz,
s/o Milagres Cardoz,
Cook, at present unemployed.
H.No.248, Guirdolim Moll,
Chandor, Salcete, Goa.
3. Carlus Cardoz,
s/o Andrew Jacob Cardoz,
r/o Pomburpa, Porvorim,
Goa.
4. Justin D'Cunha,
s/o Menino D'Cunha,
Unemployed, r/o H.No.868,
Bekremoll, Benaulim,
Salcete - Goa.
5. Pascoal Estebeiro,
s/o Carlus Estebeiro,
Unemployed, r/o H.No.370,
Vizar, Panchawadi,
Ponda, Goa.

... Respondents.

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. Arun Bras De Sa, Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 20TH JUNE, 2003.

ORAL JUDGMENT

The State being aggrieved by the Order of the Additional Sessions Judge, South Goa at Margao, in Sessions Case No.11 of 2002, dated 4th September, 2002, has filed the present Criminal Revision Application assailing the aforesaid Order. The learned Additional Sessions Judge, South Goa at Margao, by the aforesaid impugned Order had come to the conclusion that since there was no material on record that five or more persons had taken part in the offence of robbery or dacoity Section 397 of the Indian Penal Code was not attracted and there was no material on record to show that the Accused had used deadly weapons or caused grievous hurt while committing robbery or dacoity and as such no offence under Section 397 of the Indian Penal Code was made out. The learned Additional Sessions Judge at Margao, therefore, proceeded to discharge Original Accused Nos.1, 2 and 3 who are the Respondent Nos.1, 2 and 3 herein for an offence punishable under Sections 395 and 397 of the Indian Penal Code and directed the framing of the charge against Original Accused Nos.1, 2 and 3 for an offence of robbery punishable under Sections 392, 427, 504 r/w 34 of the Indian Penal Code. The learned Additional Sessions Judge, South Goa at Margao, therefore, remitted the

records and proceedings back to the Chief Judicial Magistrate, Margao for trial according to law. The learned Additional Sessions Judge, South Goa at Margao discharged Original Accused Nos.4 and 5 who are the Respondent Nos.4 and 5 herein as there was no material against them.

2. A brief reference to the fact is necessary. A complaint came to be lodged by the Complainant on 14th June, 2001 at 7.35 p.m. by the Complainant Babu Bandekar. In the complaint, it was stated that on the same day at about 6 p.m. at Kastimol, Sanguem, three persons came on a blue colour Vespa scooter and wrongfully restrained the Complainant by putting the scooter in front of his pick-up van which was being driven by the Complainant, assaulted the Complainant and his 18 years old son Vikram with fist blows, kicks etc.. The said three persons snatched away gold chain from the Complainant and a bag containing cash of Rs.70,000/- to 80,000/- and caused damage to the side glass of the said pick-up van by stones. The said three persons had also taken away the key of the said pick-up van. On the basis of the said complaint, an offence vide Crime No.14/01 under Sections 394, 427 and 504 of the Indian Penal Code was initially registered. The Complainant and his son Vikram were referred for medical examination and it was opined by the Medical Officer that Vikram had

lost one tooth and the Complainant had sustained fracture and the injuries by the Complainant and his son Vikram were grievous in nature and, therefore, Section 394 of the Indian Penal Code was converted into Section 397 of the Indian Penal Code. During the course of investigation, the present Respondents/Original Accused came to be arrested.

3. Since, grievous hurt was caused to the Complainant and his son Vikram, the Respondents/Original Accused Nos.1, 2 and 3 would be liable for offence punishable under Section 397 of the Indian Penal Code. Section 34 of the Indian Penal Code cannot be invoked in respect of an offence punishable under Section 397 of the Indian Penal Code and it will have to be determined as to which of the Accused caused grievous hurt to the Complainant and his son Vikram. The Original Accused Nos.1, 2 and 3 have been identified in the test identification parade and their description has also been given in the complaint and the statement. Prima facie, therefore, the learned Additional Sessions Judge, South Goa at Margao, was not correct in holding that Section 397 of the Indian Penal Code was not applicable at all. Section 397 of the Indian Penal Code can be invoked if at the time of committing robbery or dacoity either deadly weapons are used or grievous hurt is caused. In the present case, admittedly, grievous hurt

was caused to the Complainant and his son Vikram. A charge therefore, ought to have been framed under Section 397 of the Indian Penal Code in respect of the Accused who has actually caused grievous hurt to the Complainant and his son Vikram and against other Accused who has not caused grievous hurt, a charge under Section 392 of the Indian Penal Code ought to have been framed.

4. Mr. S. N. Sardessai, learned Public Prosecutor appearing for the State has stated that as against Original Accused No.5, Pascoal Estebeiro, certain stolen property had been recovered from his possession. The stolen property comprising of cash is alleged to have been taken from the possession of the Complainant and his son Vikram. According to Mr. Sardessai, learned Public Prosecutor appearing for the State as against Original Accused No.5, Pascoal Estebeiro, a charge only under Section 411 of the Indian Penal Code can be framed. As against Original Accused No.4, Justin D'Cunha, there is absolutely no material which is disclosed in the charge-sheet. The Order, therefore, discharging Original Accused No.4, Justin D'Cunha, does not require any interference.

5. Since, prima facie the material discloses the commission of the offence under Section 397 of the Indian Penal Code qua Original Accused Nos.1, 2 and 3

and in view of the recovery of stolen property from the possession of Accused No.5, according to me, the Order impugned in the present revision is unsustainable. The Order of the learned Additional Sessions Judge, South Goa at Margao, dated 4th September, 2002, is hereby quashed and set aside. The learned Additional Sessions Judge, South Goa at Margao, is directed to examine the material and frame appropriate charge under Section 397 of the Indian Penal Code against the Accused alleged to have caused grievous hurt to the Complainant and his son Vikram and frame appropriate charge against the other Accused. The Order discharging Original Accused No.4 Justin D'Cunha does not require any interference and is accordingly maintained.

6. Accordingly, Criminal Revision Application No.27 of 2002 is partly allowed Records and Proceedings be remitted back to the Trial Court.

P. V. HARDAS, J.

RD.